

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,     ) Application No. 911-031.01  
on its own motion, seeking to         )  
establish surcharges assessed on       )  
users of prepaid wireless               ) ORDER TO SHOW CAUSE  
service and, methods for the           )  
collection and remittance of           )  
surcharges from carriers               )  
offering prepaid wireless               ) Entered: April 22, 2008  
services: TracFone Wireless,           )  
Inc.

BY THE COMMISSION:

On June 19, 2007, the Nebraska Public Service Commission (Commission) opened this proceeding, on its own motion, to establish surcharges assessed on users of prepaid wireless service and methods for the collection and remittance of surcharges from carriers offering prepaid wireless services as required by the Enhanced Wireless 911 Services Act, Neb. Rev. Stat. § 86-441, et seq. (Cum. Supp. 2006), as amended by Nebraska Laws LB 661 [2007] (the Act).

All wireless carriers offering prepaid wireless services were required to notify the Commission in writing no later than September 1, 2007, if they intend to utilize one of the three established methods, and as to which of the three methods it will utilize for the collection and remittance of the enhanced wireless 911 surcharge.

On or about September 1, 2007, TracFone Wireless, Inc. filed an application to use an alternative method for the collection and remittance of the enhanced wireless 911 surcharge. Hearing on the matter took place on January 16, 2008. On April 1, 2008, the Commission entered an order rejecting TracFone's proposed method and requiring TracFone to adopt one of the three established methods or, propose a suitable method not limited only to direct sales to users of its service, no later than fourteen (14) days from the date of the order.

On April 15, 2008, TracFone submitted a second alternative method, stating that the E911 surcharges would be collected at the point of retail sale at a rate of one percent (1%) on every retail sale of TracFone service. TracFone further proposes that third-party vendors would collect the surcharge and remit said amounts to TracFone who would then remit those amounts to the Commission. In its filing, TracFone states, "it believes that the Commission has broad authority under current law to

promulgate a point-of-sale collection method."<sup>1</sup> In support of its assertion, TracFone relies upon Neb. Rev. Stat. § 86-457(3) which states, "If a wireless carrier, except as otherwise provided in this section, resells its service through other entities, each reseller shall collect the surcharge from its customers and shall remit the surcharge in accordance with section 86-459."

Contemporaneous with this order, the Commission has entered an order rejecting the second alternative method proposed by TracFone pursuant to Neb. Rev. Stat. § 75-901.01 as outside the jurisdiction of the Commission.

The Commission finds that TracFone should be ordered to Show Cause as to why the Commission should not assess civil penalties pursuant to Neb. Rev. Stat. §§ 86-470 and 75-156 for failure to comply with its April 1, 2008 order by failing to file a suitable method for the collection and remittance of enhanced wireless 911 surcharges or electing to utilize one of the previously approved methods set forth in the Commission June 19, 2007 order in Application 911-031. Public Hearing should be set on the matter.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that TracFone Wireless, Inc. show cause as to, why civil penalties should not be assessed pursuant to Neb. Rev. Stat. §§ 86-470 and 75-156 as set forth herein.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission, that hearing be held, on the matter, in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska, **May 21, 2008, 10:00 a.m.**, and that TracFone Wireless, Inc. be notified of the hearing.

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<sup>1</sup> Application No. 911-031.01, Notification of Alternative Collection Method, pg. 4 (April 15, 2008).

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of  
April, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director